

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DIONTAE JOHAN DUNCAN,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA HEALTHCARE  
RECEIVERSHIP CORP., et al.,  
  
Defendants.

Case No. 1:20-cv-01288-KES-SKO (PC)

ORDER ADOPTING IN PART FINDINGS  
AND RECOMMENDATIONS TO GRANT  
DEFENDANT TAYLOR'S MOTION TO  
DISMISS

(Doc. 118)

Plaintiff Diontae Johan Duncan is proceeding pro se and *in forma pauperis* in this civil rights action brought under 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On August 9, 2024, the assigned magistrate judge issued findings and recommendations, recommending that defendant Taylor's motion to dismiss be granted and that plaintiff be given leave to file a further amended complaint to cure the lack of clarity within his second amended complaint. Doc. 118. The magistrate judge advised the parties that the "failure to file objections within the specified time may result in waiver of his rights on appeal." *Id.* at 23, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).

1 On August 30, 2024, plaintiff filed a notice of change of address, indicating he had been  
2 released from custody and was residing in Richmond, California. Doc. 119. The findings and  
3 recommendations were re-served to plaintiff at his new address on that same date. The time to  
4 file objections concerning the findings and recommendations following re-service has now passed  
5 without objections being filed. *See* docket. On September 27, 2024, plaintiff lodged an  
6 additional amended complaint, which also suggests non-objection to the findings and  
7 recommendations. *See* Doc. 120.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a *de*  
9 *novo* review of this case. Having carefully reviewed the file, the Court finds the findings and  
10 recommendations to be supported by the record and proper analysis as to defendant Taylor's  
11 motion to dismiss the second amended complaint and the recommendation to allow for the filing  
12 of a third amended complaint as to all claims. The assigned magistrate judge's fourth  
13 recommendation is accepted so far as lifting the stay on defendants Marciel, Gallienne III, and  
14 Grewal's deadline to file a responsive pleading, however, defendants Marciel, Gallienne III, and  
15 Grewal shall not be required to file a responsive pleading until after the magistrate judge has  
16 screened plaintiff's third amended complaint. *See* 28 U.S.C. § 1915A(a).

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Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant Taylor's motion to dismiss filed on November 15, 2023, Doc. 101, is GRANTED;
2. Plaintiff's claims against defendant Taylor contained within the second amended complaint filed May 4, 2022, Doc. 52, are DISMISSED with leave to amend;
3. Plaintiff's lodged amended complaint, Doc. 120, shall be deemed the third amended complaint filed in response to this order's grant of leave to amend;
4. The stay of the responsive pleading deadline, Doc. 106, is LIFTED;
5. This action is referred to the assigned magistrate judge for screening and subsequent proceedings consistent with this order.

IT IS SO ORDERED.

Dated: October 11, 2024

  
UNITED STATES DISTRICT JUDGE